



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

West Arm Behm Canal, Naval Surface Warfare Center, Ketchikan, Alaska;

Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending existing regulations for an existing restricted area near Ketchikan, Alaska to correct inaccuracies in regards to flashing beacon light descriptions, point of contact changes, and restrictive area distances for small craft.

DATES: Effective date: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Ms. Linda Speerstra, U.S. Army Corps of Engineers, Alaska District, Regulatory Division, at 907-747-0658.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is

amending the regulation at 33 CFR 334.1275 by revising the restricted area regulation for Area 5 in the waters of the West Arm Behm Canal, Naval Surface Warfare Center, Ketchikan, Alaska. This amendment revises the existing restricted area regulation to accurately describe the installed light configuration, update contact information, and increase vessel transiting opportunities.

The proposed rule was published in the Federal Register on June 22, 2015 (80 FR 35620), and the regulations.gov docket number is COE-2015-0009. In response to the proposed rule, one comment was received. The commenter recommended that an Environmental Impact Statement (EIS) be conducted. The Corps has determined that an EIS for this type of action is not necessary as it is an administrative action and would not result in environmental impacts. Therefore, no changes to the final rule are required.

Procedural Requirements

a. Review Under Executive Order 12866. The rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small

governments). The restricted area is necessary to protect users of this waterway during naval operations. The restricted area will only be closed for brief amounts of time (usually no more than 20 minutes) when it is activated. The Corps has determined that the changes to this rule would have no significant economic impact on the public. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps has determined that these amendments to regulation will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement is not required. An environmental assessment has been prepared and it may be reviewed at the Alaska district office.

d. Unfunded Mandates Act. This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. In § 334.1275, revise paragraphs (b)(5), (c), and (d) to read as follows:

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, restricted areas.

* * * * *

(b) * * *

(5) Area No. 5. (i) The area will be open unless the Navy is actually conducting operations. To ensure safe and timely passage through the restricted area vessel operators are required to notify the Facility Control Officer of their expected time of arrival, speed and intentions. For vessels not equipped with radio equipment, the Navy shall signal with flashing beacon lights whether passage is prohibited and when it is safe to pass through the area. A flashing amber beacon means that the area is closed to all vessels and to await a clear signal. The flashing amber beacon not lighted is the clear signal and indicates that vessels may proceed through the area. Each closure of the area by the Navy will normally not exceed 20 minutes.

(ii) When Area No. 5 restrictions are in place, vessels may operate within 1000 yards of the shoreline at speeds no greater than 5 knots in accordance with the restriction in effect in Area No. 3.

(c) Vessels will be allowed to transit Area No. 5 within 20 minutes of marine radio or telephone notification to the Navy Facility Control Officer.

(d) Enforcement. The regulations in this section shall be enforced by the Commander, Naval Surface Warfare Center, Carderock Division, and such agencies he/she may designate.

Dated: November 15, 2015.

Edward E. Belk, Jr.,
Chief, Operations and Regulatory Division,
Directorate of Civil Works.

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